

OTS DOCKET #8269

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of
RICHARD F. LAHAR,
A Former Vice President of
NEW ENGLAND FEDERAL SAVINGS BANK,
Wellesley, Massachusetts

Order No. NE 95- 13

Date: October 26, 1995

STIPULATION AND CONSENT TO
ISSUANCE OF ORDER OF PROHIBITION

This Stipulation and Consent to Issuance of an Order of Prohibition ("Stipulation") is made by Richard F. Lahar, a former Vice President of New England Federal Savings Bank, Wellesley, Massachusetts ("NEFSB"), and is accepted by the Office of Thrift Supervision of the United States Department of the Treasury ("OTS"), acting by and through its Regional Director for the Northeast Region.

WHEREAS, OTS, based on information derived from the exercise of its regulatory responsibilities, is of the opinion that grounds exist to initiate administrative proceedings against Mr. Lahar pursuant to 12 U.S.C. § 1818(e);¹ and

1. All references to U.S.C. are as amended, unless otherwise specified.

WHEREAS, without either admitting or denying the aforesaid grounds, or OTS's findings, conclusions or opinions (except those as to Jurisdiction, set forth in paragraph 2 below, which are admitted), Mr. Lahar desires to cooperate with OTS and to avoid the time and expense of such administrative litigation with OTS;

NOW, THEREFORE, Mr. Lahar hereby stipulates and agrees as follows:

1. Consent. Mr. Lahar consents to the issuance by OTS of an Order of Prohibition ("Order") in consideration of the settlement, compromise and resolution of all potential administrative claims and charges that have been or might be asserted by OTS against Mr. Lahar arising out of his role as an officer of NEFSS.

2. Jurisdiction.

(a) Prior to the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 ("FIRREA"), NEFSS was an "insured institution," as defined by 12 U.S.C. § 1724 (1988), and after the enactment of FIRREA, became a "savings association" as defined by 12 U.S.C. §§ 1462(4) and 1813(b)(1);

(b) Prior to the enactment of FIRREA, Mr. Lahar was a "person participating in the conduct of the affairs" of NEFSS within the meaning of 12 U.S.C. §§ 1730(e) and (g) (1988), and after the enactment of FIRREA, became an "institution affiliated party" of NEFSS as that term is defined in 12 U.S.C. § 1813(u);

(c) Prior to the enactment of FIRREA, pursuant to 12 U.S.C. §§ 1725 and 1730 (1988), the Federal Home Loan Bank Board

("FHLBB"), as operating head of Federal Savings and Loan Insurance Corporation ("FSLIC"), was the regulatory agency with jurisdiction over "insured institutions";

(d) Upon the enactment of FIRREA, pursuant to 401(f) of FIRREA, 12 U.S.C. § 1437 note, OTS succeeded to the interests of FHLBB with respect to the supervision and regulation of "insured institutions," and thus, pursuant to 12 U.S.C. § 1813(q), OTS is the "appropriate Federal banking agency" with jurisdiction over NEFSB, and all of its "directors, officers, employees, agents or persons participating in the conduct of the affairs," and "institution-affiliated parties."

3. Findings and Conclusions. Based upon its formal investigation in this matter, and solely for purposes of this Stipulation and the related Order, OTS finds and concludes that Mr. Lahar, while acting as the loan officer for the following loans, engaged in breaches of fiduciary duty, regulatory violations and unsafe or unsound practices:

(a) In 1986, NEFSB made two loans to Lahar's business partner for the purchase of property. In each case, Lahar knew or should have known that the seller took a second mortgage. The second mortgages were not reflected in NEFSB's underwriting for the loans. The second mortgages resulted in a debt-to-equity ratio of over 90%, which was in violation of NEFSB's internal policies and contrary to basic principles of safety and soundness. The loans became nonperforming and NEFSB foreclosed at a loss of \$68,100.

(b) In 1987, NEFSB made a loan to a third party to purchase property in which Lahar had an ownership interest and which he had mortgaged at other institutions. Some of the loan proceeds were used to pay down Lahar's debt at the other institutions. The NEFSB loan was in violation of the regulations governing transactions with affiliated parties, 12 C.F.R. § 563.43(c) (1987).

(c) In 1988, NEFSB made a purchase money loan to a nominee for delinquent NEFSB borrowers. The nominee immediately sold the property to a realty trust whose principals were the delinquent borrowers. Lahar's action in connection with this transaction was in violation of 12 C.F.R. § 563.40 (1988).

(d) The requirements of Section 1818(e), 12 U.S.C. § 1818(e), having been fulfilled, an Order of Prohibition may issue against Richard P. Lahar.

4. Finality. The Order is issued pursuant to 12 U.S.C. § 1818(e). Upon its issuance by OTS, the Order shall be final, effective and fully enforceable by OTS pursuant to 12 U.S.C. § 1818(1).

5. Waivers. Pursuant to this Stipulation, Mr. Lahar hereby waives:

(a) his rights to a hearing, all post-hearing proceedings, and the entry of findings of fact and conclusions of law under the Administrative Procedure Act, 5 U.S.C. §§ 554-557; 12 U.S.C. § 1818(a); OTS Rules of Practice and Procedure in Adjudicatory Proceedings, 12 C.F.R. § 509, et seq. (1995); or any other applicable provision of law;

(b) his right to appeal the Order pursuant to 12 U.S.C. § 1818(h), or any other applicable provision of law; and

(c) his right to any and all claims for fees, costs or expenses from the government relating to this OTS enforcement matter and the Order, including any claims under the Equal Access to Justice Act, 5 U.S.C. § 504, and under 28 U.S.C. § 2412.

6. Other Governmental Actions Not Affected. Pursuant to this Stipulation, Mr. Lahar hereby agrees that the Order is for purposes of resolving this administrative enforcement matter only, arising in connection with OTS's formal investigation of NEFSS, Resolution No. NE 92-98, dated November 23, 1992, and that other than resolving this administrative enforcement matter, the Order does not release, compromise, settle, dismiss, resolve or preclude any other actions, charges against, or liability of Mr. Lahar or any other administrative, civil or criminal proceedings that may be or have been brought against him by OTS or any other governmental agency; and

7. Understanding about Financial Condition. It is understood that the OTS has agreed to forego payment of restitution for the transactions described in ¶ 3 above, based on Mr. Lahar's representations about his current financial condition, as set forth in a written statement of financial condition dated August 10, 1995 (on OTS Form 1571, the "Statement of Financial Condition", which has been signed by Mr. Lahar and Mr. Lahar's September 26, 1995 letter supplementing that written statement (the "Supplement"), also signed by Mr. Lahar. In the event that any information included in the Statement of Financial Condition

or Supplement is found to be false or misleading with respect to any material fact, or if in connection with the Statement of Financial Condition or Supplement, Mr. Lahar has omitted to state a material fact concerning any matter addressed in the Statement of Financial Condition or Supplement, then, without limitation on other remedies available under Federal law, the OTS may, in the exercise of its discretion, declare this settlement void and seek any available remedy, including the assessment of civil money penalties.

8. Acknowledgment of Criminal Sanctions. Mr. Lahar acknowledges that Section 8(j) of the FDIA, 12 U.S.C. 1818(j), sets forth criminal penalties for knowing violations of the prohibition provisions of the Order.

9. Miscellaneous. Pursuant to this Stipulation, Mr. Lahar hereby agrees that:

(a) the construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America, and the section and paragraph headings shall not affect the interpretation of this Stipulation or the Order;

(b) all references to OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors and assigns;

(c) this Stipulation and the Order represent the final written agreement of the parties with respect to the subject matters set forth in paragraph 3 above, and constitute the sole agreement of the parties with respect to such subjects;

(d) neither the terms of this Stipulation nor the Order may

be amended or modified except by formal written action of the OTS;

(e) he will cooperate with OTS by providing truthful and complete information, upon request, concerning matters relating to OTS's investigation of the affairs of NEFSB, including, but not limited to, cooperation in any subsequent administrative enforcement action that OTS may bring against others affiliated with NEFSB.


WHEREFORE, in consideration of the foregoing, Richard P. Lahar executes this Stipulation and Consent to Issuance of an Order of Prohibition pursuant to which he agrees to be legally bound.

Agreed to:


RICHARD P. LAHAR

Accepted by:

OFFICE OF TRIFT SUPERVISION


ANGELO A. VIGNA
Regional Director
Northeast Region

Date: October __, 1995

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RICHARD P. LAHAR,

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Order No. NE 95-13

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ORDER OF PROHIBITION

WHEREAS, Richard P. Lahar, a former Vice President of New England Federal Savings Bank ("NEFSB"), has executed a Stipulation and Consent to Issuance of an Order of Prohibition ("Stipulation");

WHEREAS, Mr. Lahar, in the Stipulation, has consented and agreed to the issuance of this Order of Prohibition ("Order"), pursuant to 12 U.S.C. § 1818(e);

WHEREAS, the Director of the Office of Thrift Supervision ("OTS") has delegated to the Regional Directors of OTS the authority to issue Orders on behalf of OTS where Respondents have consented to the issuance of the Order; and

NOW THEREFORE, IT IS ORDERED, on the basis of the consent evidenced in the Stipulation and without any adjudication on the merits, that:

A. Prohibition Provisions

1. Richard P. Lahar is prohibited from further participation, in any manner, in the conduct of the affairs of NEFSB, and any holding company, subsidiary, and/or service corporation thereof.

2. Due to, and without limitation on, the operation of Section 8(e)(6) and (7) of the FDIA, 12 U.S.C. § 1818(e)(6) and (7), Richard P. Lahar, except with the prior written approval of the OTS (acting through its Director or an authorized representative thereof) and, if applicable, the "appropriate Federal financial institutions regulatory agency," for purposes of 12 U.S.C. § 1818(e)(7)(B)(ii), shall not:

(a) hold any office in, or participate in any manner in the conduct of the affairs of, any Federally regulated depository institution or any other entities that are described in 12 U.S.C. § 1818(e)(7)(A) of the FDIA (the "Paragraph 7(A) Institutions"), including, but not limited to:

- (i) any insured depository institution, e.g., savings and loan associations, savings banks, national banks, trust companies, and other banking institutions;
- (ii) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3) and (4), or as a savings association under 12 U.S.C. § 1818(b)(9), e.g., subsidiaries and holding companies of banks or savings associations;
- (iii) any insured credit union under the Federal Credit Union Act, 12 U.S.C. §§ 1781 et seq.;

- (iv) any institution chartered under the Farm Credit Act of 1971, 12 U.S.C. §§ 2001 et seq.;
- (v) any appropriate Federal financial institutions regulatory agency, within the meaning of 12 U.S.C. § 1818(e)(7)(D);
- (vi) the Federal Housing Finance Board and any Federal Home Loan Bank; and
- (vii) the Resolution Trust Corporation.

(b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any Paragraph 7(A) Institution;

(c) violate any voting agreement previously approved by the "appropriate Federal banking agency" within the meaning of 12 U.S.C. § 1813(q); or

(d) vote for a director, or serve or act as an "institution-affiliated party" as that term is defined at 12 U.S.C. § 1813(u), e.g., a director, officer, employee, controlling stockholder of, or agent for, an insured depository institution.

B. General Provisions


3. This Order is subject to the provisions of Section 8(i) and (j) of the FDIA, 12 U.S.C. § 1818(i) and (j), and shall become effective on the date it is issued, as shown in the caption above.

4. The Stipulation is made a part hereof and is incorporated herein by this reference.

5. All technical words or terms used in this Order, for which meanings are not specified or otherwise provided by the provisions

of this Order shall, insofar as applicable, have meaning as defined in the Code of Federal Regulations, Title 12, Chapter V, or as defined in Federal Deposit Insurance Act, Financial Institutions Reform, Recovery and Enforcement Act, or the Home Owners' Loan Act, and any such words or terms undefined in the foregoing shall have meanings that accord with the best customs and usage in the thrift industry.

THE OFFICE OF THRIFT SUPERVISION



ANGELO A. VIGNA
Regional Director
Northeast Region